



July 2016

K-12 EDUCATION

**Education's
Experiences with
Flexibility Waivers
Could Inform Efforts to
Assist States with
New Requirements**

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Why GAO Did This Study

Beginning in 2011, Education used its statutory authority to invite states to apply for waivers from certain provisions in the ESEA through its Flexibility initiative. To receive Flexibility waivers, states had to agree to meet other requirements related to college- and career-ready expectations, school accountability and support, and effective instruction. Education approved Flexibility waivers for 43 states. In December 2015, Congress reauthorized the ESEA which modified Education's waiver authority. GAO was asked to review Education's Flexibility initiative.

GAO examined the extent to which Education assessed states' ability to fully implement their Flexibility waivers and the process it used to oversee the waivers. GAO reviewed relevant federal laws, guidance, and key documents related to the Flexibility initiative, such as monitoring reports; and interviewed Education officials. GAO reviewed Education's documents and identified states facing multiple challenges in implementing their waivers. GAO also interviewed officials in five states, selected to reflect a range of challenges states faced in implementing the waivers.

What GAO Recommends

GAO recommends that Education evaluate its Flexibility initiative oversight process to identify lessons learned and incorporate any applicable lessons into its plans for overseeing state implementation of the new law. Education generally agreed and outlined steps to address the recommendation.

View GAO-16-650. For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or nowickij@gao.gov.

What GAO Found

Since introducing its Flexibility initiative in 2011—inviting states to request a waiver from certain provisions of the Elementary and Secondary Education Act of 1965 (ESEA) in effect at the time—the Department of Education (Education) has monitored states' efforts and identified challenges to states' ability to fully implement their waivers. According to GAO's analysis of Education letters and monitoring reports, 12 of the 43 states with Flexibility waivers faced multiple challenges that affected their ability to fully implement their waivers. Education used a risk assessment process to document these challenges throughout the waiver approval, monitoring, and renewal phases (see table). For example, Education identified risks with one state's capacity to oversee and monitor schools needing improvement prior to approving the state's waiver in 2013 and noted similar issues, as a result of monitoring, in 2015. Overseeing local districts and schools was particularly challenging for states, according to GAO's analysis of Education documents. Meanwhile, Education has not yet evaluated its process to review, approve, and monitor the Flexibility waivers given to states or incorporated any relevant lessons learned into its plans for implementing the December 2015 reauthorization of the ESEA. According to federal internal control standards, agencies should consider lessons learned when planning agency activities. As Education begins to implement the new law, it has an opportunity to learn from its experiences with the Flexibility initiative and incorporate any applicable lessons learned. Absent such an evaluation, Education may miss opportunities to better oversee state implementation of the new law.

From 2012 to 2015, Education Identified Challenges at Different Points during the Flexibility Initiative in 12 States of 43 Total States with Waivers

State	Waiver Approval	Waiver Monitoring	Waiver Renewal
Alabama	×	×	--
Arizona	×	×	--
Florida	×	--	×
Louisiana	--	×	×
Massachusetts	--	×	×
Nevada	×	×	--
New Hampshire	--	×	×
Ohio	×	--	×
Oklahoma	×	--	×
Pennsylvania	×	×	×
South Dakota	--	×	×
Texas	×	--	×

* State faced a challenge

-- State did not face a challenge

Source: GAO analysis of Department of Education documentation. | GAO-16-650

Note: The Flexibility initiative refers to waivers granted by the Department of Education to 43 states providing relief from certain provisions of the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001.

Contents

Letter		1
	Background	5
	Education Assessed States' Ability to Implement Flexibility	
	Waivers and Identified Challenges but Has Not Yet Evaluated	
	Its Own Oversight Processes	9
	Conclusions	15
	Recommendation for Executive Action	15
	Agency Comments and Our Evaluation	15
Appendix I	Key Benefits and Challenges of Flexibility Waivers, According to Officials in Selected States	17
Appendix II	Provisions Waived Through the Flexibility Initiative	19
Appendix III	Comments from the Department of Education	22
Appendix IV	GAO Contact and Staff Acknowledgments	25
Tables		
	Table 1: Summary of Key Principles of the Flexibility Initiative	6
	Table 2: Education's Process Enabled it to Identify Challenges to State Implementation of Waiver Requests	10
	Table 3: States with Multiple Challenges Identified by Education during the Flexibility Initiative	12
	Table 4: States with Multiple Challenges Which Did Not Meet Education's Expectations for Monitoring Aspects of their Flexibility Waivers	13
	Table 5: Flexibility Waiver Provisions	19
Figure	Figure 1: Flexibility Waiver Request and Decision Process	8

Abbreviations

AYP	Adequate Yearly Progress
Education	Department of Education
ESEA	Elementary and Secondary Education Act of 1965
ESSA	Every Student Succeeds Act
NCLBA	No Child Left Behind Act of 2001
SEA	State Educational Agency

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

July 7, 2016

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor and Pensions
United States Senate

The Honorable John Kline
Chairman
Committee on Education and the Workforce
House of Representatives

In December 2015, Congress reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). Among other things, the new law, known as the Every Student Succeeds Act (ESSA), requires states to submit plans to the Department of Education (Education) for approval that describe states' compliance with various requirements, such as implementing a statewide accountability system to identify and support low-performing schools.¹ Like the prior reauthorization—known as the No Child Left Behind Act of 2001 (NCLBA)—ESSA authorizes Education to waive various statutory or regulatory provisions, subject to certain requirements. ESSA also modified this waiver authority.² For example, ESSA prohibits Education from requiring states to include specific academic standards in their waiver requests or to use specific academic assessments as a condition of waiver approval.

In September 2011, in response to states' requests for relief from certain provisions of the NCLBA, Education invited states to request waivers that would grant them flexibility in meeting certain NCLBA requirements in

¹Pub. L. No. 114-95, 129 Stat. 1802 (2015). These plans are required for states to participate in Title I, Part A (Title I) of the ESEA, which provides formula grants to states for their school districts to improve educational programs in schools with high concentrations of students from low-income families. States are currently operating their Title I programs in accordance with plans approved under the prior version of the ESEA, the No Child Left Behind Act of 2001. Pub. L. No. 104-110, 115 Stat. 1425 (2002). We use the term "school district" in this report to refer to "local educational agency" as defined by the ESEA.

²Pub. L. No. 114-95, § 8013, 129 Stat. 1802, 2103-17 (2015) (amending 20 U.S.C. § 7861).

effect at that time,³ such as identifying for improvement or corrective action those schools and school districts that repeatedly failed to meet the state's adequate yearly progress goals.⁴ In response, almost every state applied for a Flexibility waiver, and Education ultimately approved waivers for 43 states. As part of the Flexibility initiative, states agreed to address four principles identified by Education that included implementing college- and career-ready standards and assessments; district and school recognition, accountability and support systems; and systems for evaluating and supporting teacher and principal effectiveness. The Flexibility initiative built on reform efforts begun under the Race to the Top and School Improvement Grants programs.⁵ We have previously reported that states and school districts have experienced a variety of challenges with those programs, such as obtaining support from stakeholders and building staff capacity.⁶ Under the ESSA, all waivers granted through the Flexibility initiative terminate on August 1, 2016.⁷

You asked us to review Education's design, implementation, and oversight of its Flexibility initiative. In light of the effects that the ESSA

³Education granted waivers in various other contexts; however, this report discusses only those waivers granted under this Flexibility initiative.

⁴Under the NCLBA, school districts were required to identify for improvement, corrective action, or restructuring, as appropriate, their Title I schools that failed to make adequate yearly progress (AYP) for 2 consecutive years or more. In addition, states were required to identify for improvement or corrective action, as appropriate, districts that failed to make AYP for 2 consecutive years or more.

⁵States used Race to the Top grants for reforms in four core areas of K-12 education: (1) standards and assessments; (2) data systems; (3) effective teachers and leaders; and (4) turning around low-performing schools. Race to the Top recipients also committed to building strong statewide capacity to implement, scale up, and sustain their plans. States use School Improvement Grants to make competitive sub-grants to districts that demonstrate the greatest need and strongest commitment to providing resources to low-performing schools. Education has not made any new Race to the Top grants to states since 2011. The ESSA eliminates the School Improvement Grants program.

⁶GAO, *Race to the Top: Education Could Better Support Grantees and Help Them Address Capacity Challenges*, GAO-15-295 (Washington, D.C.: Apr. 13, 2015), and *School Improvement Grants: Education Should Take Additional Steps to Enhance Accountability for Schools and Contractors*, GAO-12-373 (Washington, D.C.: Apr. 11, 2012).

⁷Pub. L. No. 114-95, § 4(c), 129 Stat. 1802, 1806. Although ESSA provided that changes to the noncompetitive formula grant programs, including Title I, would generally go into effect July 1, 2016, under the Consolidated Appropriations Act, 2016, these grants are to be administered in accordance with the NCLBA for academic year 2016-2017. Pub. L. No. 114-95, § 5, 129 Stat. 1802, 1807. Pub. L. No. 114-113, § 312, 129 Stat. 2242, 2638 (2015).

may have on state education systems, this report examines the extent to which Education assessed states' ability to fully implement their Flexibility waivers and the process it used to oversee this initiative.

To perform this work, we used a variety of approaches. We reviewed relevant federal laws and guidance, as well as key federal documentation provided by Education related to the review and approval of Flexibility waivers and monitoring reports. In addition, we interviewed officials in Education's Office of State Support, Risk Management Service, Office of Elementary and Secondary Education, Office of the General Counsel, and Office of Planning, Evaluation, and Policy Development. To determine if any states faced challenges to their ability to fully implement their Flexibility waivers, we reviewed states' waiver approval letters, waiver renewal letters, and monitoring reports.⁸ On the basis of that review, we identified states that had at least two of the following designations:

- Education included conditions when approving the state's initial Flexibility waiver;
- Education found during monitoring that the state was not implementing an element of its Flexibility waiver consistent with its approved request and meeting Education's expectations for establishing systems and processes—particularly for monitoring schools and school districts—that supported waiver implementation; or
- Education included conditions when renewing the state's Flexibility waiver.

To learn more about challenges specific states faced in implementing their Flexibility waivers, we conducted structured interviews with officials in four states: Arizona, Louisiana, Oklahoma, and Pennsylvania. These were selected from those states we identified that had at least two of the designations noted above to reflect a range of challenges states faced in implementing Flexibility waivers. We also interviewed an official in

⁸Our review does not include Flexibility waivers from the District of Columbia or Puerto Rico.

Washington state—the only state whose waiver was not extended—because it was unable to fully implement its Flexibility waiver.⁹

Of the four principles on which the Flexibility initiative was based, we focused our efforts on three:

- college- and career-ready standards and assessments;
- district and school accountability and support systems; and
- systems for evaluating and supporting teacher and principal effectiveness.

We did this because Education's oversight activities and state challenges identified under the Flexibility initiative focused on these three principles. Our review does not include the initiative's fourth principle, which is related to removing duplicative and burdensome reporting requirements that do not directly affect student outcomes. We evaluated Education's process for risk assessment and its efforts to learn from its experiences with the Flexibility initiative using standards for internal control in the federal government.¹⁰ In addition, we considered our prior work on the Flexibility initiative in which we held discussion groups with selected states regarding the benefits and challenges of requesting and implementing Flexibility waivers under NCLBA (for more about our prior review, see app. I).¹¹ Further, we interviewed education policy stakeholders from the Council of Chief State School Officers and National Conference of State Legislatures because they have direct, broad-based knowledge about states' experiences with the Flexibility initiative, including challenges states encountered when implementing their waivers.

⁹Education approved Washington's initial Flexibility waiver request in 2012 but declined to extend the waiver beyond the 2013-2014 school year because, according to the department, Washington had not developed a teacher and principal evaluation system consistent with plans contained in Washington's approved Flexibility waiver. As a result of losing its waiver, Washington had to comply with all NCLBA requirements beginning in the 2014-2015 school year.

¹⁰GAO, *Standards for Internal Control in the Federal Government*. GAO/AIMD-00-21.3.1. (Washington, D.C.: Nov. 1, 1999). These standards were in effect when the Flexibility initiative began in September 2011. GAO has revised and reissued *Standards for Internal Control in the Federal Government*, with the new revision effective as of October 1, 2015. GAO-14-704G (Washington, D.C.: September 2014).

¹¹Specifically, we conducted interviews with 15 states that had waivers and 5 states that did not have waivers—for a total of 20 states—at the time of our review. We selected states based on variation in the amount of their Title I grants and geographic characteristics.

We conducted this performance audit from August 2015 to July 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Under the NCLBA, the Secretary of Education had the authority to waive many statutory and regulatory requirements for states, school districts, and other entities that received funds under a program authorized by the law, provided that certain conditions were met.¹² In September 2011, Education introduced the Flexibility initiative and invited states to request a waiver for flexibility from certain NCLBA requirements in effect at the time. For example, Education offered to waive requirements related to the timeline for determining whether states, districts, and schools were making adequate yearly progress toward improved academic achievement for all students, including specified subgroups. (See app. II for a full list of NCLBA provisions that could be waived under the Flexibility initiative.) To be approved for a Flexibility waiver, Education required states to address certain principles for improving elementary and secondary education, as seen in table 1.

¹²Specifically, the NCLBA authorized the Secretary of Education to waive, with certain exceptions, any statutory or regulatory requirement of the ESEA for a state, school district, Indian tribe, or school that received ESEA funds and submitted a waiver request that met statutory requirements. Among other things, it required that the request describe how the waiving of the requirements would increase the quality of instruction for students and improve the academic achievement of students.

Table 1: Summary of Key Principles of the Flexibility Initiative

College- and Career-Ready Standards and Assessments (Principle 1)	District and School Recognition, Accountability and Support Systems (Principle 2)	Teacher and Principal Evaluation and Support Systems (Principle 3)
States could address this principle by adopting college- and career-ready standards in at least reading/language arts and mathematics, transitioning to and implementing such standards statewide, and developing and administering annual high-quality assessments and corresponding academic achievement standards that measure student growth in at least grades 3-8 and at least once in high school.	A state could address this principle by developing systems that included: <ul style="list-style-type: none">• student achievement data in at least reading/language arts and mathematics for all students and all subgroups of students identified in the law;• graduation rates for all students and all subgroups; and• school performance and progress over time, including the performance and progress of all subgroups. Among other things, states had to design systems that ensured that school districts were providing interventions to improve student academic achievement. In addition, states were required to monitor school districts' implementation of interventions, hold districts accountable for improving school and student performance, and provide technical assistance as appropriate.	States and school districts were to commit to develop, adopt, pilot, and implement—with the involvement of teachers and principals—teacher and principal evaluation systems that use multiple measures, including data on student growth from state assessments. Among other things, these systems were to be used to improve instruction, provide feedback for professional development, and inform personnel decisions.

Source: GAO summary of Department of Education (Education) documentation. | GAO-16-650

Note: Education granted, extended, and renewed Flexibility waivers between 2012 and 2015. The law that was in effect during that time period has since been amended by the Every Student Succeeds Act, enacted December 10, 2015.

Education's Student Achievement and School Accountability Office was responsible for administering the Flexibility initiative until October 2014. At that time, the Student Achievement and School Accountability Office became part of the newly-created Office of State Support, which assumed responsibility for administering the initiative.

As part of Education's process for reviewing and approving states' requests for waivers under the Flexibility initiative, Education invited states to submit their requests in one of several "windows" between 2011 and 2014. Almost every state applied for a waiver during one of these windows. Generally, Education approved states to implement their requests for a certain number of years. As of April 2016, Education had approved requests for Flexibility waivers in 43 states.¹³ In November

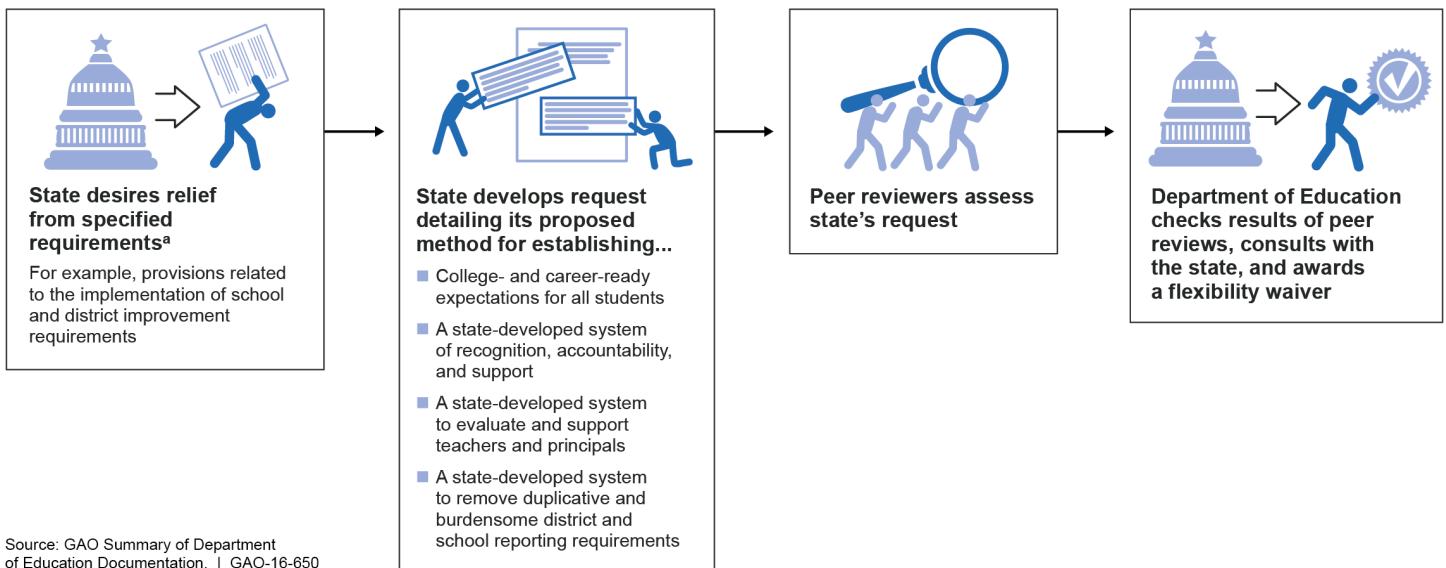
¹³Education also approved waiver requests from the District of Columbia and Puerto Rico. Of the remaining states, two states did not apply (California and Montana); two states withdrew their requests (North Dakota and Vermont); and, as of April 2016, Education had not yet made a decision regarding waiver requests from three states (Iowa, Nebraska, and Wyoming) and the Bureau of Indian Education.

2014, Education invited states that had received approval for Flexibility waivers for the 2014-2015 school year to submit a request to renew their waivers for an additional 3 years, or through the end of the 2017-2018 school year.¹⁴

As shown in figure 1, Education established a process in which states requested Flexibility waivers, states' requests were peer-reviewed, and Education made final decisions. According to Education officials, the review and decision process was focused on whether states' requests were consistent with Flexibility principles. Education convened peer review panels to evaluate states' initial Flexibility waiver requests and suggest ways to strengthen a state's plan for implementing the principles of the Flexibility initiative. For example, peer reviewers in some cases suggested strengthening plans to ensure that students from racial and ethnic subgroups were sufficiently included in school accountability systems. Ultimately, Education used the results of peer review and the department's internal analysis to inform its final decision of whether or not to approve states' Flexibility waiver requests.

¹⁴In February 2014, window one and window two waiver recipients could request to extend their waivers for 1 year or through the end of the 2014-2015 school year. Additionally, states fully implementing across all three principles for the 2014-2015 school year were invited to submit a request to renew their waivers for an additional 4 years, or through the end of the 2018-2019 school year. However, as previously mentioned, in December 2015, the ESSA was enacted, which provides that all waivers granted through the Flexibility initiative will terminate on August 1, 2016.

Figure 1: Flexibility Waiver Request and Decision Process



Source: GAO Summary of Department of Education Documentation. | GAO-16-650

^aEducation granted, extended, and renewed Flexibility waivers between 2012 and 2015. The law that was in effect during that time period, the No Child Left Behind Act of 2001, has since been amended by the Every Student Succeeds Act, enacted December 10, 2015.

After completing the initial review and decision process, Education conducted a monitoring process to oversee Flexibility waiver implementation and identify any areas in which states needed additional support. The first part of the monitoring process (referred to as “Part A” monitoring) was designed to provide Education with a more in-depth understanding of a state’s goals and approach to implementing its Flexibility waiver and to ensure that the state had the critical elements in place to begin implementing its plan. The second part of the monitoring process (referred to as “Part B” monitoring) was designed to enable Education to review state implementation of the plan and follow up from the initial monitoring.

Education Assessed States' Ability to Implement Flexibility Waivers and Identified Challenges but Has Not Yet Evaluated Its Own Oversight Processes

Education Identified Challenges to States' Ability to Implement Flexibility Waivers

By establishing a process to review, approve, and monitor states' Flexibility waivers, Education identified challenges to states' ability to fully implement their waivers, as shown in table 2. Recognizing that Flexibility waivers affected multiple significant aspects of state and local educational systems, Education took steps that enhanced its ability to identify implementation risks. For example, officials in Education's Office of State Support (the office responsible for the initiative) told us they coordinated with other Education offices to identify findings or concerns regarding how states were implementing other education programs that might affect a state's waiver implementation. Education's efforts to identify implementation risks were consistent with standards for internal control in the federal government, which define risk assessment as identifying and analyzing relevant risks associated with achieving program objectives. Agency management is to comprehensively identify risks and consider any effects they might have on the agency's ability to accomplish its mission for all projects, such as the Flexibility initiative.

Table 2: Education's Process Enabled it to Identify Challenges to State Implementation of Waiver Requests

Part of the Process	Description	How it helped Education identify challenges
Review	Education's review helped determine if requests met the Flexibility principles, using both external peer reviewers and agency personnel.	Reviewers noted areas in which states' request were inconsistent with the principles of the initiative, such as insufficient plans to monitor local efforts to improve low-performing schools.
Establishing Conditions at Initial Approval and Renewal	Education approved some initial requests and renewal requests with conditions that states had to address.	In letters approving initial and renewal requests, Education notified states of any risks the agency identified, such as a state's having not yet finalized rules for its school grading system.
Monitoring	Education conducted two rounds of monitoring: Part A was designed to assess whether the state had critical elements in place to facilitate implementation, and Part B was designed to assess early implementation of waiver activities.	By notifying states of monitoring findings, Education communicated risks to implementation, such as state and local report cards that lacked sufficient information, so that states could take corrective action.

Source: GAO summary of Department of Education (Education) documentation. | GAO-16-650

Education asked states to include information in their initial Flexibility waiver requests about how they consulted with teachers and their representatives and other stakeholders, such as parents and organizations representing students with disabilities and English learners, in developing their waiver proposals. However, officials we interviewed in two states, as well as an official from the National Conference of State Legislatures, discussed issues related to stakeholder consultation, especially with state legislatures, regarding their Flexibility waiver requests. For example, Washington state was unable to implement a teacher and principal evaluation and support system that included student learning growth as a significant factor. A state official told us they attempted to design a system that would meet the needs of various stakeholders, including teachers, but ultimately the system was not implemented because, according to Education, the state legislature did not approve the changes needed to put the system in place. In addition, Arizona officials said state laws and rules from the state board of education limited their ability to implement an accountability system that was consistent with their Flexibility waiver request.¹⁵ Under the ESSA, states will be required to develop their Title I state plans with timely and

¹⁵We have previously reported that issues with officials' engagement with state legislatures, among other stakeholders, has created challenges for some states and districts in the Race to the Top program; see [GAO-15-295](#). Education's Office of Inspector General has also found that limited engagement of stakeholders led to implementation challenges in the Race to the Top program. See U.S. Department of Education Office of Inspector General, *The Department's Monitoring of Race to the Top Program Recipient Performance*, ED-OIG/A19M0003 (Washington, D.C.: Jan. 3, 2014).

meaningful consultation with the governor and members of the state legislature and state board of education, among others.¹⁶

Twelve States Faced Multiple Challenges in Implementing Their Flexibility Waivers, Especially Related to Local Oversight

Of the 43 states with Flexibility waivers, we identified 12 states that faced multiple significant challenges throughout the initiative, affecting their ability to fully implement their waivers: Alabama, Arizona, Florida, Louisiana, Massachusetts, Nevada, New Hampshire, Ohio, Oklahoma, Pennsylvania, South Dakota, and Texas. As shown in table 3, these 12 states had at least two of the following designations:

- Education included conditions when approving the state's initial Flexibility waiver;
- Education found during monitoring that the state was not implementing an element of its Flexibility waiver consistent with its approved request meeting Education's expectations for establishing systems and processes—particularly for monitoring schools and school districts—that supported waiver implementation; or
- Education included conditions when renewing the state's Flexibility waiver.¹⁷

Some of these states were unable to fully address the challenges Education identified when their waiver was initially approved. For example, Education identified risks related to Pennsylvania's capacity to monitor interventions in "focus schools"¹⁸ prior to approving the state's Flexibility waiver and subsequently found during Part B monitoring (nearly

¹⁶Although the NCLBA required state plans to be developed in consultation with certain specified entities, such as school districts, teachers, and parents, it did not require consultation with the governor, members of the state legislature, or members of the state board of education. The ESSA adds these additional entities, among others, as well as language requiring consultation to be "timely and meaningful."

¹⁷The remaining 31 states with Flexibility waivers had no more than one of these designations, with the exception of Washington whose waiver was approved but not renewed.

¹⁸For the purposes of the Flexibility initiative, Education defines a focus school as a Title I school that either (a) has the largest within-school gaps between the highest-achieving subgroup or subgroups and the lowest-achieving subgroup or subgroups or, at the high school level, has the largest within-school gaps in graduation rates; or (b) has a subgroup or subgroups with low achievement or, at the high school level, low graduation rates. The total number of focus schools in a state must equal at least 10 percent of the Title I schools in the state.

2 years later) that the state lacked a plan to conduct such monitoring.¹⁹ Pennsylvania officials told us that, according to Education officials, these weaknesses resulted from not documenting how interventions in focus schools were consistent with the state's plan to improve student achievement in these schools. To help manage these challenges, Education included conditions when approving and renewing these states' Flexibility waivers and provided technical assistance. During Part B monitoring, Education found that most of these states were not meeting Education's expectations for establishing monitoring systems and processes that support implementation of their Flexibility waivers.²⁰

Table 3: States with Multiple Challenges Identified by Education during the Flexibility Initiative

State	Approval	Monitoring	Renewal
Alabama	P2, P3	P2	—
Arizona	P2, P3	P2	—
Florida	P2	—	P2
Louisiana	—	P2	P1
Massachusetts	—	P2	P1, P3
Nevada	P2	P1	—
New Hampshire	—	P1	P1, P3
Ohio	P2	—	P3
Oklahoma	P2	—	P1, P3
Pennsylvania	P3	P2, P3	P3
South Dakota	—	P2	P3
Texas	P3	—	P3

P1: Principle 1, College- and Career-Ready Standards and Assessments

P2: Principle 2, District and School Recognition, Accountability and Support systems

P3: Principle 3, Teacher and Principal Evaluation and Support systems.

— Education identified no challenges

Source: GAO analysis of Department of Education (Education) documentation. | GAO-16-650

Note: According to Education officials, the challenges states faced varied widely and included both administrative and policy issues. In addition, conditions at approval and renewal, as well as monitoring findings were used by Education to identify challenges states may have encountered when implementing their waivers. For Part B Monitoring, we focused on findings related to systems and processes—particularly for monitoring—that supported waiver implementation.

¹⁹ Education officials told us that Pennsylvania addressed this issue after Part B monitoring and before the department renewed the state's waiver.

²⁰ In the Part B monitoring reports for each state, Education indicated its determination as to whether the state had "met expectations" or "did not meet expectations" across a variety of measures.

Many of these states were particularly challenged to develop systems for overseeing local school districts and schools. Specifically, during Part B monitoring, Education found that 8 of the 12 states we identified as facing multiple challenges did not meet expectations regarding systems for monitoring local implementation of their Flexibility waivers (see table 4). According to Education officials, many states were not implementing monitoring activities consistent with their approved Flexibility waivers and the key Flexibility principles. For example, Education found that Alabama did not have a formal monitoring mechanism to ensure its interventions in priority schools, focus schools, and other Title I schools met the requirements of the Flexibility initiative; and New Hampshire did not monitor its districts' adoption and implementation of college- and career-ready standards.

Table 4: States with Multiple Challenges Which Did Not Meet Education's Expectations for Monitoring Aspects of their Flexibility Waivers

State	College- and Career-Ready Standards and Assessments (Principle 1)	District and School Recognition, Accountability and Support systems (Principle 2)	Teacher and Principal Evaluation and Support Systems (Principle 3)
Alabama	—	✗	—
Arizona	—	✗	—
Louisiana	—	✗	—
Massachusetts	—	✗	—
Nevada	✗	—	—
New Hampshire	✗	—	—
Pennsylvania	—	✗	✗
South Dakota	—	✗	—

— State met Education's Expectations

✗ State did not meet Education's Expectations

Source: GAO analysis of Education documentation. | GAO-16-650

Note: According to Department of Education (Education) officials, states varied in their ability to implement systems and processes to monitor implementation of their Flexibility waivers. Some states faced significant challenges when implementing these systems, while others states faced minor ones such as not having sufficient documentation that supported their monitoring activities for Flexibility implementation.

During the initial Flexibility waiver review and decision process and Part B monitoring, Education asked states about their plans to monitor local implementation and asked for documentation, such as monitoring schedules or reports. Education officials told us that state monitoring of local implementation is a persistent challenge across many education programs, and said that the possible reasons states continue to experience challenges related to monitoring include staff capacity and

staff turnover at state departments of education. Education officials told us they could help states strengthen their monitoring efforts by disseminating best practices but have not yet done so because of time and resource constraints.

Education did not establish specific timeframes for providing final Part B monitoring reports to states. According to our analysis of Education's documentation, it took over 4 months, on average, to provide states with final Part B monitoring reports; for 10 states, it was over 6 months.²¹ Education officials told us that many factors affected the time frames for finalizing its monitoring reports, such as the complexity of the approaches being used by a state to implement its Flexibility waiver, the need to balance this work with other high-priority work being done by department staff, and the U.S. government shutdown in October 2013. Recognizing that the length of time Education takes to notify a state about monitoring findings affects how long it will take a state to address any implementation risks the department identified, Education officials told us they provided draft reports to states earlier in the process and gave them an opportunity to provide technical edits to the draft reports.

Education Has Not Yet Evaluated its Oversight Process for the Flexibility Initiative, Which Could Strengthen Its Ability to Support and Oversee ESSA Implementation Efforts

Although 12 states faced multiple challenges throughout the Flexibility waiver initiative, Education has not yet evaluated its process for reviewing, approving, and overseeing Flexibility waivers. Education officials told us they intend to identify lessons from the Flexibility initiative, particularly with regard to technical assistance for and oversight of state monitoring efforts and that such lessons learned would help them better support states with developing and implementing state plans for ESSA implementation. For example, Education officials told us they plan to determine how they can improve their use of the peer review process for ESSA state plans. As of yet, however, Education has not evaluated its oversight of Flexibility waivers and did not provide us with a time frame for doing so. According to standards for internal control in the federal government, agencies should consider lessons learned when planning agency activity, as doing so can help an agency communicate acquired knowledge more effectively and ensure that beneficial information is factored into planning, work processes, and activities. As Education begins its efforts to implement the ESSA, it has the opportunity to learn from its experiences with the Flexibility initiative. Without identifying

²¹The amount of time is measured from the date of the conclusion of the monitoring event to the date Education provided the state with its final monitoring report.

lessons from oversight of the waiver process, Education may miss opportunities to better support ESSA implementation.

Conclusions

The Flexibility waiver initiative affected multiple, complicated aspects of state and local systems for elementary and secondary education and, thus, was a significant undertaking by the department. In implementing its Flexibility initiative, Education's efforts identified many key challenges states faced in implementing their waiver requests, such as incomplete systems for school accountability or teacher and principal evaluation. We found that 12 of the 43 states with Flexibility waivers faced significant challenges in addressing risks identified throughout the initiative, affecting their ability to fully implement their waivers. These challenges included ensuring states were effectively monitoring their districts and schools, which is a key aspect of program effectiveness, and an area where the department has identified oversight issues across programs.

The waivers granted under Education's Flexibility initiative will terminate on August 1, 2016, and states are preparing to develop and implement new Title I plans under the newly reauthorized law, the ESSA. Education continues to develop its oversight and technical assistance strategies for implementing the ESSA, which includes different requirements related to school accountability, among other things. Absent an evaluation of its oversight process for the Flexibility initiative to identify lessons learned, Education may miss an opportunity to strengthen its monitoring and oversight of states' implementation of plans under ESSA and better support them in the areas that have presented significant challenges.

Recommendation for Executive Action

To better manage any challenges states may face implementing the ESSA, we recommend that the Secretary of Education direct the Office of State Support to evaluate its oversight process in light of the challenges states encountered in implementing the Flexibility initiative to identify lessons learned and, as appropriate, incorporate any lessons into plans for overseeing the ESSA, particularly around issues such as the design and implementation of states' monitoring systems.

Agency Comments and Our Evaluation

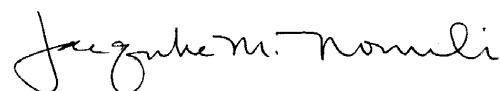
We provided a draft of this report to Education for its review and comment. Education's written comments are reproduced in appendix III. Education also provided technical comments, which we incorporated into the report, as appropriate.

In its written comments, Education agreed that it is important to continuously evaluate its work and to consider ways to improve its efficiency and effectiveness and cited examples of the agency doing so

during ESEA Flexibility implementation. For example, Education said it developed the Office of State Support, in part based on lessons learned while implementing the Flexibility initiative. In addition, Education said that since the ESSA was enacted in December 2015, it has continued to informally evaluate ESEA Flexibility implementation and oversight and cited several examples relevant to ESEA Flexibility and other Education programs and initiatives. For example, Education said that it has been considering changes to its planned performance review system designed to support state implementation of the Flexibility initiative and other programs. Further, the agency provided new information in its letter, telling us that it is piloting quarterly calls between Education program officers and states and piloting a fiscal review in eight states focused on components of the law it says did not change significantly between NCLBA and ESSA. As Education continues its efforts to evaluate lessons learned from the Flexibility initiative—including the peer review process—and apply them to its oversight of ESSA, we encourage Education to incorporate these lessons into how it oversees the design and implementation of states' monitoring systems which are key to the success of ESSA's accountability provisions. We believe that by doing so, Education will be better positioned to support states as they implement the law's new requirements.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report will be available at no charge on the GAO web site at <http://www.gao.gov>.

If you or your staff should have any questions about this report, please contact me at (617) 788-0580 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Jacqueline M. Nowicki, Director
Education, Workforce, and Income Security Issues

Appendix I: Key Benefits and Challenges of Flexibility Waivers, According to Officials in Selected States

In prior work, we interviewed selected states regarding the benefits and challenges of requesting and implementing waivers granted through the Department of Education's (Education) Flexibility initiative under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA).¹ To develop this information, we collected information from 20 states by conducting interviews with 15 states that had waivers and 5 states that did not have waivers at the time of our review.² We presented this information orally to congressional requesters in August 2015. The following summarizes that briefing.

State Officials Said Waivers Helped Them Identify and Assist Schools Most in Need of Resources	<ul style="list-style-type: none">Officials from 6 states told us the waivers allowed districts to better identify the lowest-performing schools and better target their resources.Officials from 10 states told us the waivers helped them develop a single school accountability system or align their existing federal and state school accountability systems to help streamline data collection and reporting.
Complying with Certain Waiver Requirements Was Challenging and State Officials Expressed Concerns about Education's Support and Oversight	<ul style="list-style-type: none">Officials from 14 states told us that implementing teacher and principal evaluation systems was a challenging aspect of their waivers, in some cases due to lack of stakeholder support for needed legislative or collective bargaining changes, or difficulty in meeting Education's requirements for incorporating student growth into teacher and principal evaluation systems.Officials from 9 states expressed concerns that Education's timeframes to implement waiver requirements were too rigid and accelerated for such large-scale reforms. Officials from 5 of these

¹The information provided in this appendix refers to the ESEA as amended by the No Child Left Behind Act of 2001, which was in effect during the time period when Education granted, extended, and renewed ESEA Flexibility waivers (2012-2015). The ESEA was subsequently amended by the Every Student Succeeds Act (ESSA), enacted December 10, 2015. Under the ESSA, all approved ESEA Flexibility waivers will terminate on August 1, 2016; other changes made by ESSA to the ESEA will be phased in over time.

²Education granted waivers in various other contexts; however, this appendix discusses only those waivers granted under the Flexibility initiative.

states told us that timelines for implementing teacher and principal evaluation systems were especially challenging.

- Officials in 4 states without waivers told us they do not have waivers because they could not come to agreement with Education about key aspects of requirements for accountability or teacher and principal evaluation systems.
- Officials in 3 states told us Education staff were responsive to day-to-day emails and phone calls; officials in 3 other states told us Education was slow to provide more substantive oversight, such as formal monitoring.
- Officials in 8 states told us that, because of staff turnover at Education during the waiver initiative, there was often an incomplete transfer of information from one staff person to the next, which required state officials to explain previous discussions or decisions, frustrating states, and wasting time.

Appendix II: No Child Left Behind Act of 2001 (NCLBA) Provisions Waived Through the Flexibility Initiative

Table 5: Flexibility Waiver Provisions

Waiver Provision	Summary of Flexibility Available	NCLBA Section Waived^a
1. The 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP)	A state educational agency (SEA) would no longer need to follow the required procedures for setting annual measurable objectives to use in determining AYP. Instead, an SEA would develop new “ambitious but achievable” annual measurable objectives in order to provide meaningful goals to guide support and improvement efforts for the state, school districts, schools, and student subgroups.	1111(b)(2)(E) - (H)
2. Implementation of School Improvement Requirements	A school district would no longer be required to comply with requirements to identify for improvement, corrective action, or restructuring, as appropriate, its Title I schools that fail to make AYP for 2 consecutive years or more, and neither the district nor its schools would be required to take the required improvement actions. However, an SEA could still require or permit a district to take such actions. A school district would also be exempt from all required administrative and reporting requirements related to school improvement.	1116(b)
3. Implementation of School District Improvement Requirements	An SEA would no longer be required to comply with requirements to identify for improvement or corrective action, as appropriate, a school district that fails to make AYP for 2 consecutive years or more, and neither the district nor the SEA would be required to take the required improvement actions. A school district would also be exempt from all administrative and reporting requirements related to school district improvement.	1116(c)
4. Rural School Districts	A school district that receives Small, Rural School Achievement Program funds or Rural and Low-Income School Program funds would have flexibility to use those funds for any authorized purpose regardless of the school district’s AYP status.	6213(b) and 6224(e)
5. Schoolwide Programs	A school district would have flexibility to operate a schoolwide program in a Title I school that does not meet the NCLBA’s 40 percent poverty threshold, under certain conditions.	1114(a)(1)
6. Support School Improvement	An SEA would have flexibility to allocate certain NCLBA funds to a school district in order to serve certain schools that are identified as among the lowest-performing or contributing to the achievement gap in the state, if the SEA determines such schools are most in need of additional support.	1003(a)
7. Reward Schools	An SEA would have flexibility to use certain NCLBA funds to provide financial rewards to certain schools that are identified as among the highest-performing, or “high-progress,” if the SEA determines such schools are most appropriate for financial rewards.	1117(c)(2)(A)

**Appendix II: No Child Left Behind Act of 2001
(NCLBA) Provisions Waived Through the
Flexibility Initiative**

8. Highly Qualified Teacher Improvement Plans	A school district that does not meet its highly qualified teacher targets would no longer have to develop a required improvement plan and would have flexibility in how it uses its Title I and Title II funds. An SEA would be exempt from the requirements regarding its role in the implementation of these plans, including the requirement that it enter into agreements with districts on the uses of funds and the requirement that it provide technical assistance to districts on their plan.	2141
9. Transfer of Certain Funds	An SEA and its school districts would have flexibility to transfer up to 100 percent of the funds received under certain NCLBA programs (such as Improving Teacher Quality State Grants) among those programs and into Title I, Part A. Certain pre-transfer notification requirements would also be waived.	6123
10. School Improvement Grants ^b	An SEA would have flexibility to award School Improvement Grant funds to a school district to implement one of the four School Improvement Grant models in certain schools identified as among the lowest-performing in the state.	1003(g)
Optional		
11. Use of 21st Century Community Learning Centers Program Funds	An SEA would have flexibility to permit community learning centers that receive funds under this program to use them to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session (i.e., before and after school or during summer recess).	4201(b)(1)(A) and 4204(b)(2)(A)
12. Making AYP determinations	An SEA and its school districts would no longer be required to comply with the requirements to make AYP determinations for school districts and schools, respectively. Instead, the SEA and its districts report on their report cards performance against the annual measurable objectives for specified subgroups of students (such as students with disabilities) and use performance against the annual measurable objectives to support continuous improvement in Title I schools.	1116(a)(1)(A)-(B) and 1116(c)(1)(A)
13. Within-District Title I Allocations	A school district would have flexibility to use Title I funds to serve a Title I-eligible high school with a graduation rates below 60 percent that the SEA has identified as among the lowest-performing schools in the state, even if the school does not rank sufficiently high to be served based solely on the school's poverty rate.	1113(a)(3)-(4) and (c)(1)
14. Availability of Certain Title I Funds for Additional Schools ^c	When the SEA has funds remaining after ensuring that all identified schools have sufficient funds to carry out interventions (under waiver provision 6), it may allocate these remaining funds to its districts to provide interventions and supports for low-achieving students in other Title I schools when one or more subgroups miss either annual measurable objectives or graduation rate targets or both over a number of years.	1003(a)
15. Double-Testing Students ^c	The SEA would not be required to double test a student who is not yet enrolled in high school but who takes advanced, high school level, mathematics coursework. The SEA would assess such a student with the corresponding advanced, high school level assessment in place of the mathematics assessment the SEA would otherwise administer to the student for the grade in which the student is enrolled.	1111(b)(1)(B) and 1111(b)(3)(C)(i)

Source: GAO analysis of Department of Education (Education) documentation | GAO-16-650

^aIn general, associated regulatory provisions were also waived. This table refers to the provisions of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA), which were in effect during the time period when Education granted, extended, and renewed Flexibility waivers (2012-2015). The ESEA was subsequently amended by

**Appendix II: No Child Left Behind Act of 2001
(NCLBA) Provisions Waived Through the
Flexibility Initiative**

the Every Student Succeeds Act (ESSA), enacted December 10, 2015. As a result, the provisions referenced in this table do not reflect current law. Under the ESSA, all approved Flexibility waivers will terminate on August 1, 2016; other changes made by ESSA will be phased in over time.

^bAfter the initiative began, Education determined this provision was unnecessary and did not include it for states requesting to renew their waivers.

^cStates could request these optional flexibilities when renewing their Flexibility waivers.

Note: We use the term “school district” in this table to refer to “local educational agency” as defined by the ESEA.

Appendix III: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

WASHINGTON, D.C. 20202

THE ASSISTANT SECRETARY

JUN 15 2016

Ms. Jacqueline M. Nowicki
Director, Education, Workforce, and Income Security
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Nowicki:

Thank you for providing the U.S. Department of Education (Department) the opportunity to review and comment on the U.S. Government Accountability Office's (GAO's) draft report entitled "K-12 Education: Education's Experiences with Flexibility Waivers Could Inform Efforts to Assist States with New Requirements" (GAO-16-650). This performance audit was conducted in response to a congressional request to review the Department's design, implementation, and oversight of the Elementary and Secondary Education Act (ESEA) flexibility initiative. However, the review ultimately focused on examining the extent to which the Department assessed the ability of States approved for ESEA flexibility to implement their approved ESEA flexibility requests. The review included multiple methods of collecting information and data, including document review and interviews with Department staff across multiple offices and staff in select State educational agencies. This letter is in response to the opportunity to review and comment on the draft report.

GAO's recommendation – To better manage any challenges states may face implementing the ESSA, we recommend that the Secretary of Education direct the Office of State Support to evaluate its oversight process in light of the challenges states encountered in implementing the Flexibility initiative to identify lessons learned and, as appropriate, incorporate any lessons into plans for overseeing the ESSA, particularly around issues such as the design and implementation of states' monitoring systems.

Following a lengthy delay to reauthorize the Elementary and Secondary Education Act of 1965, which had been most recently reauthorized through the No Child Left Behind Act of 2001 (NCLBA), the Department began in 2011 to offer States flexibility from NCLBA's prescriptive provisions in exchange for State-led reforms that maintained a high bar for achievement and accountability for all students. This initiative grew from increasing requests from States and districts to relieve the pressures created by obsolete and increasingly impracticable NCLBA accountability requirements following the long delay

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**Appendix III: Comments from the Department
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in reauthorizing the ESEA, and each of the principles of ESEA flexibility matured from the law.

Based on its review of this initiative, GAO provided one recommendation. Specifically, GAO recommends that the Secretary of the Department direct the Office of State Support (OSS) to evaluate its oversight process in light of the challenges that States encountered in implementing ESEA flexibility to identify lessons learned and, as applicable, incorporate these lessons into plans for overseeing implementation of the recently passed Every Student Succeeds Act (ESSA). The Department has engaged in continuous improvement of its oversight processes and procedures to better support States throughout the implementation of ESEA flexibility, identifying and applying lessons learned along the way regarding how best to oversee and support State implementation of ESEA flexibility. The Department began to transition its thinking towards applying these lessons learned to the implementation of the ESSA when President Obama signed the new law on December 10, 2015. We agree with GAO that it is important to continuously evaluate our work and to consider ways to improve our efficiency and effectiveness.

In interviews GAO conducted with the Department for this review, as well as in written responses that the Department provided to GAO for purposes of this review, the Department described how it developed the OSS within the Office of Elementary and Secondary Education (OESE) based on lessons learned early in administering ESEA flexibility and other programs aimed at comprehensive education reform in States. The structure of the OSS allows the Department to support States more holistically, across multiple federal programs, and with a more in-depth understanding of State-specific issues. Other examples of how the Department evaluated implementation, identified lessons learned, and applied these lessons during administration of ESEA flexibility include: (1) revising the ESEA flexibility Part B monitoring report in summer 2013 in order to be more clear and transparent for States and the public, based on lessons learned during Part A monitoring and the piloting of Part B monitoring; (2) establishing an “expedited renewal review process” in winter of 2015 for States originally approved for ESEA flexibility in the first and second submission windows that maintained their original commitments to the initial ESEA flexibility timelines and principles; and (3) streamlining the process of working with States to make any necessary revisions to ESEA flexibility renewal requests during spring and summer 2015 to support States in meeting all of the principles of ESEA flexibility. These examples clearly demonstrate the Department’s commitment to evaluating administration of ESEA flexibility and identifying lessons learned in order to support States as they continued to implement their approved ESEA flexibility requests.

In addition, the Department applied lessons learned from the original ESEA flexibility reviews when developing other systems and processes, including the process to review State Plans to Ensure Equitable Access to Excellent Educators (Educator Equity Plans) in 2015. The Department established the Equitable Access Support Network (EASN), comprised of knowledgeable experts in the field, to provide technical assistance to States during Educator Equity Plan development. Further, the EASN has worked with the Department and other partners in the field, such as the Great Teachers and Leaders

**Appendix III: Comments from the Department
of Education**

Comprehensive Center, to provide support for States as they implement their Educator Equity Plans.

Since the ESSA was signed into law on December 10, 2015, the Department has continued the practice of informally evaluating ESEA flexibility implementation and oversight prior to the initiative ending on August 1, 2016. We continue to glean lessons learned, and are already considering how we can incorporate the lessons that we have identified to date into our plans for overseeing the ESSA, including covering issues such as the design and implementation of State monitoring systems. For example, as we noted in our response to you on April 17, 2016, OSS is currently considering what changes need to be made to its planned performance review system in light of the passage of the ESSA. We are piloting some aspects of this new performance management system this year, including instituting quarterly calls between the OSS program officers and each State to focus on key areas of implementation of OSS programs. In addition, OSS is implementing a pilot fiscal review in 2016 of eight States focused on the components of the ESEA that do not change significantly between NCLBA and the ESSA. Finally, OESE has instituted a grantee risk assessment and OSS piloted the risk assessment tool in fall 2015 to analyze State progress and, in part, to select States for the pilot fiscal review. As we begin to consider how to best support States during the transition to the ESSA, the Department will continue to apply lessons learned from the original review and approval of ESEA flexibility requests as we prepare our plans to peer review and, if appropriate, approve consolidated State plans under the ESSA.

As your draft report indicates, “[The Department] continues to develop its oversight and technical assistance strategies for implementing the new law.” As we do so, we intend to continue evaluation of our oversight processes and procedures, identify lessons learned, and, as appropriate, incorporate these lessons into plans for overseeing the ESSA. We believe that doing so will help facilitate effective State and local implementation, and realize the potential, of the new law.

Thank you for your consideration of our comments. We also are submitting recommendations for technical changes to the draft report. If you have additional questions or need additional information, we remain available to assist you. We look forward to receiving the final report.

Sincerely,



Ann Whalen
Senior Advisor to the Secretary
Delegated the Duties of Assistant Secretary
for Elementary and Secondary Education

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact	Jacqueline M. Nowicki, (617) 788-0580 or nowickij@gao.gov
Staff Acknowledgements	In addition to the contact named above, Scott Spicer (Assistant Director), Jason Palmer (Analyst-in-Charge), Sarah Cornetto, Brian Egger, Jean McSween, Linda Siegel, and Carmen Yeung made key contributions to this report. Also contributing to this report were James Bennett, Deborah Bland, Holly Dye, Nisha Hazra, John Lack, Avani Locke, and David Perkins.

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